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Points of Order Limiting the Contents of Reconciliation Legislation: In Brief

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The budget resolution as established under the Congressional Budget Act of 1974 (P.L. 92-344) is designed to allow Congress to establish fiscal policy and budgetary priorities. Because it is in the form of a concurrent resolution, however, it is not presented to the President or enacted into law. As a consequence, any statutory changes concerning spending or revenues to implement these policies must be enacted in separate legislation. The Budget Act also provides an optional expedited procedure for considering such legislation in the Senate, called *reconciliation*, which was first used in 1980.¹

Reconciliation operates as an adjunct to the budget resolution process and occurs only if reconciliation instructions are included in the budget resolution.² Reconciliation instructions direct the relevant committees to develop legislation achieving specific budgetary outcomes. Instructed committees are directed to submit legislative recommendations proposing changes to *direct spending* or *revenue* laws to their respective Budget Committees by a deadline prescribed in the budget resolution. The Budget Committees then incorporate them into an omnibus budget reconciliation bill without making any substantive revisions.³

The expedited consideration of a reconciliation bill is prescribed in Section 310 of the Budget Act. Debate in the Senate on any reconciliation measure is limited to 20 hours (and 10 hours on a conference report). As a practical matter, this debate limit makes it unnecessary for the Senate to invoke cloture in order to reach a final vote on a reconciliation bill, thereby making it possible to consider and pass a reconciliation bill by a simple majority vote.

As detailed below, various provisions in the Budget Act (as well as other provisions adopted by the House and Senate) also impose constraints on the policy content or budgetary impact of reconciliation measures or amendments. The provisions cited in this report have been adopted pursuant to the constitutional authority of each chamber to determine its rules of proceeding, but further action of the House and Senate, such as in a budget resolution, may be used to revise these constraints.

These prohibitions are enforced through points of order against measures or provisions that are alleged to violate these rules. Points of order are not self-enforcing and must be raised by a Member before the presiding officer can rule on their application. The Senate may, by a vote of three-fifths of all Senators, agree to a motion to waive the application of each point of order below. In the House, any waiver would typically be included in a special rule from the Rules Committee providing for the consideration of a measure.⁴

¹ For more information see CRS Report R40480, *Budget Reconciliation Measures Enacted Into Law: 1980-2010*, by Megan S. Lynch.

² For more information see CRS Report R41186, *Reconciliation Directives: Components and Enforcement*, by Megan S. Lynch, and CRS Report R41151, *Budget Reconciliation Process: Timing of Committee Responses to Reconciliation Directives*, by Megan S. Lynch.

³ In cases where only a single committee is instructed, that committee is instead instructed to report its recommendations directly.

⁴ For more information see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

Congressional Budget Act Provisions Specific to Reconciliation

Section 310(d)—This section prohibits the consideration of amendments to reconciliation legislation that would increase the deficit, either by increasing outlays or reducing revenues, except that in the Senate a motion to strike a provision is always in order. For purposes of enforcing this constraint, the budgetary impact of an amendment is measured in relation to the budgetary impact of the bill in the House, while it is measured in relation to the level of reconciliation instructions in the Senate.

Section 310(e)—This section prohibits consideration in the Senate of nongermane amendments to reconciliation legislation, thereby limiting the ability of Senators to expand the scope of policy changes recommended by committees through amendments offered on the Senate floor.

Section 310(g)—This section prohibits the consideration of reconciliation legislation that recommends changes in Social Security.

Section 313—This section prohibits consideration in the Senate of extraneous provisions in reconciliation legislation (including any amendment or conference report).⁵ First adopted in 1985 and incorporated into the Congressional Budget Act in 1990, this provision is also known as the “Byrd Rule” and is intended to limit the content of a reconciliation bill to those changes in law necessary to implement the budgetary policies agreed to in the budget resolution. This point of order may be raised against any provision and, if well taken, would cause only that provision to be stricken. In general, a provision would be considered extraneous if it

- does not produce a change in outlays or revenues,
- produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions,
- is outside of the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure,
- produces a change in outlays or revenues that is merely incidental to the non-budgetary components of the provision,
- would increase the deficit for a fiscal year beyond the period covered by the budget resolution, or
- recommends changes in Social Security.

The application of Sections 310(e), relating to nongermane amendments, and 313, relating to extraneous matter, is guided by Senate precedent and is generally decided on a case-by-case basis. The Senate parliamentarian is the sole definitive authority on questions relating to the chamber’s procedures and should be consulted on specific parliamentary questions. Under Section 312 of the Budget Act, estimates provided by the House and Senate Budget Committees are used for purposes of enforcing points of order related to levels in their respective chamber.

⁵ For more information see CRS Report RL30862, *The Budget Reconciliation Process: The Senate’s “Byrd Rule”*, by Bill Heniff Jr.

Other Limits Specific to Reconciliation

House Rule XXI, clause 7—This rule of the House prohibits reconciliation instructions that specify changes in law that would cause an increase in net direct spending for the period covered by the budget resolution. Because this prohibition limits reconciliation *instructions*, it would apply to a budget resolution that contained such instructions but not to a reconciliation bill. It is included here because limiting the type of instructions that would be in order would also ultimately have an impact on the content of any subsequent reconciliation bill.

S.Con.Res. 21 (110th Congress), Section 202(a)—This section prohibits consideration in the Senate of reconciliation legislation that would increase or cause a deficit (or decrease a surplus) for the period of the current fiscal year and the 5 ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years.

Other Limits on the Budgetary Impact of Legislation Generally That Would Also Apply to Reconciliation

Congressional Budget Act, Section 311(a)(1)—This section prohibits consideration in the House of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution. For budget authority or outlays, this point of order would apply for the first fiscal year in the budget resolution, while for revenues it would apply for the first fiscal year and the total of all fiscal years.

Congressional Budget Act, Section 311(a)(2)—Just as in the House, this section prohibits consideration in the Senate of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution. For budget authority or outlays, this point of order would apply for the first fiscal year in the budget resolution, while for revenues it would apply for the first fiscal year and the total of all fiscal years.

House Rule XXI, clause 10—This rule of the House prohibits consideration of any legislation that would have the net effect of increasing mandatory spending for the period of the current fiscal year and the 5 ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years. This is also known as the “CutGo Rule.”

S.Con.Res. 21 (110th Congress), Section 201(a)—This section prohibits consideration in the Senate of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the period of the current fiscal year and the 5 ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years. This is also known as the “PAYGo Rule.”

S.Con.Res. 70 (110th Congress), Section 311(b)—This section prohibits consideration in the Senate of any measure that would cause a net increase in deficits in excess of \$5 billion in any of the four consecutive 10-year periods after the period covered in the most recently agreed to budget resolution. As provided in Section 116 of the Bipartisan Budget Act of 2013 (P.L. 113-67) establishing a budget resolution for FY2015 (covering FY2015-FY2024) these periods would begin after FY2024.

S.Con.Res. 13 (111th Congress), Section 404(a)—This section prohibits consideration in the Senate of direct spending or revenue legislation that would cause a net increase in the deficit in excess of \$10 billion in any fiscal year provided for in the most recently adopted budget resolution unless it is fully offset over the period of all fiscal years provided for in the most recently adopted budget resolution. As provided in Section 116 of the Bipartisan Budget Act of 2013 (P.L. 113-67) establishing a budget resolution for FY2015, this period covers FY2015-2024.

H.Con.Res. 25 (113th Congress), Section 604 (made effective in H.Res. 5 (114th Congress) Section 3)—This provision prohibits consideration in the House of any measure that would cause a net increase in direct spending in excess of \$5 billion in any of the four consecutive 10-year periods after FY2024.

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